

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: CITY OF OXFORD Public Water Supply Permit No. 52-60-017	ADMINISTRATIVE CONSENT ORDER NO. 2008-WS-04
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TO: City of Oxford
Attn. Mayor Don Saxton
P.O. Box 481
Oxford, IA 52322

I. SUMMARY

The Iowa Department of Natural Resources (Department) and the City of Oxford, Iowa (City), have entered into this administrative consent order for the purpose of resolving violations of the City's public water supply permit and applicable Department rules. In the interest of avoiding litigation, the parties have agreed to an administrative penalty in the amount of \$7,500.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Ryan Stouder, Environmental Specialist
Department Field Office #6
1004 West Madison
Washington, IA 52353
Ph: 319-653-2135

Relating to legal requirements:

David L. Wornson, Attorney at Law
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/242-5817

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50310-0034

II. JURISDICTION

The parties agree that this order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
CITY OF OXFORD**

issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. The City of Oxford (City) operates a Grade 2 water treatment and distribution system pursuant to Public Water Supply Permit No. 5260017 (permit). The City is required by Department rules and permit conditions to have a Department certified Grade 2 water treatment and distribution operator in direct responsible charge as defined by Department rules.

2. By letter dated December 8, 2004, the Department field office notified the City that it had failed to collect and report the results of the annual total trihalometaines (TTHM) and haloacetic acids (HAA5) sampling requirements by July 31, 2004 in violation of its permit. The City was required to issue a public notice.

3. The Department issued a revised permit on March 14, 2005. The revised permit specified the required monitoring requirements. The Department issued a notice of violation to the City dated March 21, 2005 for failure to sample and report the monthly coliform bacteria sample by the required due date. The City was required to issue a public notice. The Department issued a follow up notice of violation dated March 23, 2005 to the City for failure to take monthly chlorine residual at the same time as the required coliform bacteria sample. This violation in turn resulted in a failure to properly calculate and submit the required monthly maximum residual disinfectant level (MRDL) monitoring report.

4. In part as the result of a citizen complaint, the Department field office staff conducted a sanitary survey of the City's facility on July 22, 2005. The inspector noted that the operator in charge had not submitted monthly operating reports (MORS) since August, 2004. The MORS were available but had not been submitted. MRDL, lead and copper sampling plans were not available and the bacteria sampling plan was not being followed. Although chlorine residuals were tested daily, the MRDL running annual average was not being calculated as required by the permit.

5. On August 12, 2005, the Department received from the operator in charge, Mark Wright, MORS for January - July, 2005. None of the MRDL running annual average calculations had been performed. The Department issued a notice of violation to the City dated September 12, 2005 noting the MOR violations, failure to properly complete MRDL calculations and failure to follow the MRDL, lead and copper sampling plans as required by the permit and Department rules. A viability assessment was required as the result of the inspection. The September notice advised the City of the potential for taking disciplinary action against the operator, Mr. Wright, as well as enforcement action against the City.

6. The Department issued a notice of violation dated October 27, 2005 for failure to collect TTHM and HAA5 samples by the required due date of August 31, 2005.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
CITY OF OXFORD**

7. The Department issued a revised permit dated December 6, 2005 specifying water sampling requirements and MOR requirements.

8. The Department met with the operator, Mark Wright, to discuss the sanitary survey and the viability assessment. Mr. Wright indicated he had not completed the viability assessment.

9. The Department issued a notice of violation of permit conditions dated December 19, 2005 for failure to follow the City's sampling plan, failure to submit MORS and the MRDL violations.

10. On January 9, 2006, Mr. Wright submitted MORS for August - November, 2005. Again, none of the MRDL running annual average calculations had been completed.

11. As the result of a citizen complaint, the Department field office conducted a facility inspection and documented that there were no chlorine residuals at various sampling locations. The inspector reported these problems to Mayor Don Saxton. The Department issued a notice of violation dated March 30, 2006 to the City. This letter reviewed the history of citizen complaints since June, 2005 and past and continuing violations. Mr Wright submitted delinquent MORS on March 30, 2006 and again the MRDL running annual average calculations had not been completed.

12. The Department conducted a follow up inspection of the facility on April 6, 2006 and continued to document problems with maintaining required disinfection standards as required by the permit and Department rules. Mr. Wright submitted March, 2006 MORS which again did not have proper MRDL running annual average calculations.

13. The Department issued a notice of violation dated April 21, 2006. Between May of 2006 and March of 2007, Mr. Wright continued to submit MORS without properly completing the required MRDL running annual average calculations. The August 28, 2006 monthly report failed to report collection and sampling for lead and copper by June 30, 2006 as required. The November 1, 2006 monthly report indicated a failure to collect the TTIM and HAA5 samples by the required August 31, 2006 date.

14. The Department issued a revised permit to the City dated May 10, 2007. The Department issued a notice of violation to the City dated May 17, 2007 for violations of the permit including failure to follow the written sampling plan, failure to properly report MRDLs, chlorine residuals, no continuous disinfection and failure to complete the viability assessment required back in September 2005.

15. The Department issued a revised permit dated June 22, 2007. The MRDL running annual average calculations were not properly completed for June, July and August, 2007. The Department did receive a viability assessment in August, 2007. The Department issued a notice of violation dated August 20, 2007 repeating the permit violations including failure to follow the written sampling plan, MRDL and chlorine residuals reporting violations, and failure to have continuous disinfection.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
CITY OF OXFORD**

16. The City submitted its MRDL, lead and copper and coliform bacteria sampling plans in late May and early June 2008. The Department has reviewed and approved these plans. The City has responded to the sanitary survey report dated March 31, 2008 and are undertaking actions to correct the cross connection issue cited in the survey.

IV. CONCLUSIONS OF LAW

1. Iowa Code sections 455B.173(3), (5), and (6) authorize the Environmental Protection Commission (Commission) to promulgate rules relating to the operation of public water supply systems, to adopt drinking water standards to assure compliance with federal standards adopted pursuant to the federal Safe Drinking Water Act, and to adopt rules relating to monitoring, record keeping, and reporting requirements for any public water supply. The Commission has adopted such rules at 567 IAC chapters 40-43.

2. The City water supply and distribution system is a "public water supply system" as defined in Iowa Code section 455B.171(22) and a "community water system" as defined in Department rule 567 IAC 40.2.

3. No person shall operate any public water supply system without, or contrary to any condition of, an operation permit issued by the Department. See 567 IAC 43.2(2).

4. Public water supply systems must collect and sample for total coliform according to a written sampling plan which meets the minimum requirements in 567 IAC 41.2(1)"c".

5. Department rule 567 IAC 42.4(3)"d"(3) specifies the requirements for monitoring and reporting for disinfection byproducts, disinfectants, and disinfection byproduct precursors. This rule specifies the requirements for reporting and calculating the chlorine residual monthly MRDL and the quarterly annual running average.

6. Department rule 567 IAC 42.4(3)"b"(1)"3" establishes the requirements for conducting continuous disinfection and maintaining chlorine residuals within the public water supply system.

7. Department rule 567 IAC 43.8(5)"a" establishes the requirements for public water supply systems to conduct a viability assessment. Specifically, 567 IAC 43.8(5)"a"(3) requires a viability assessment whenever the Department determines as the result of a sanitary survey that the system has technical, managerial or financial problems that jeopardizes the safe and effective operation of the system.

8. Department rule 567 IAC 43.1(7) requires the Department or its designee to conduct periodic sanitary surveys of the public water supply system. The public water supply system must respond within a designated time period to any identified deficiencies, submit a plan for corrective action and implement the plan.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
CITY OF OXFORD**

9. Iowa Code section 455B.175(1) provides in part that if there is substantial evidence that any person has violated or is violating any provision of this division or chapter 459, subchapter III, or of any rule established or permit issued pursuant thereto, the Director may issue an order directing the person to desist in the practice which constitutes the violation or to take such corrective action as may be necessary to ensure that the violation will cease.

10. The City has repeatedly violated numerous provisions of its operation permit as stated in Division III by failing to complete and properly comply with monthly MRDL requirements, failure to complete and report the MRDL annual running average, failure to timely submit MORS, failure to maintain chlorine residuals and continuous disinfection, failure to collect and sample for TTHM and HAA5, and failure to timely complete a viability assessment.

V. ORDER

THEREFORE, the Department orders and the City agrees to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

1. Pay an administrative penalty of \$7,500.00 made payable to the "Iowa Department of Natural Resources" with reference to this consent order. The administrative penalty shall be paid to the Department within 30 days of the complete execution of this order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty.

The Department and the City have agreed to a penalty assessment of \$7,500 in the interest of settlement.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175(1), and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Environmental Protection Commission. This order is entered into knowingly by and with the consent of the City. By signature to this order, all rights to appeal this order are waived by the City.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
CITY OF OXFORD**

VIII. NONCOMPLIANCE

Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with provision "V. Order" of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order.



CITY OF OXFORD
BY: DON SAXTON, MAYOR

Dated this 25 day of
June, 2008



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 7 day of
July, 2008

City of Oxford, - PWS Permit No. 52-60-017, Field Office No. 6, David Wornson, I.B.2.c & d.

CC. Stephen N. Greenleaf, Lynch, Greenleaf & Michael, LLP. POB 1757. 1402 Willow Creek Court
Iowa City, Iowa 52244-1757